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No. 98-533
In the Supreme Court of the United States
October Term, 1998

CENTRAL TRANSPORT, INC. and
UNIVERSAL AM-CAN, LTD.,

Petitioners,

v.

MICHIGAN PUBLIC SERVICE COMMISSION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE MICHIGAN SUPREME COURT

BRIEF OF RESPONDENT IN OPPOSITION

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36 pp

QUESTION PRESENTED

Whether section 601 of the Federal Aviation Administration Authorization Act of 1994, which preempted state economic regulation of motor carriers as to price, route and services but which expressly excepted from that preemption state regulation of matters pertaining to safety and insurance, preempted the assessment of motor carriers' fees to fund the non-preempted regulatory activities of the Michigan Public Service Commission?

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The order of the Michigan Supreme Court denying leave to appeal is reported at 458 Mich. 852 (Pet. App. 30-31). The opinion of the Michigan Court of Appeals affirming in part, and reversing in part, the decision of the Michigan Public Service Commission is reported at 223 Mich. App. 288, 566 N.W.2d 299 (1997) (Pet. App. 1-30). The decision of the Michigan Public Service Commission is unreported (Pet. App. 32-78).

JURISDICTION

The order of the Michigan Supreme Court denying leave to appeal was entered on June 29, 1998. The petition for a writ of certiorari was filed September 28, 1998. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a). Although the petition incorrectly states that it seeks a writ of certiorari to the Michigan Supreme Court, because that court denied discretionary review (Michigan Court Rule 7.301(A)(2)) it is the judgment of the Michigan Court of Appeals which is reviewable under 28 USC § 1257(a). *Interstate Circuit, Inc. v Dallas*, 390 US 676, 678 n.1 (1968); Stern, Gressman, Shapiro & Geller, Supreme Court Practice, § 3.12, p. 115 (7th ed. 1993).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Supremacy Clause, U.S. Const., Art. VI., cl. 2 is set forth at Pet. App. 79. Section 601 of the Federal Aviation Administration Authorization Act of 1994, ("Section 601") 49 U.S.C. 14501(c) is set forth at Pet. App. 80-83.

STATEMENT

1. On August 23, 1994, President Clinton signed into law the Federal Aviation Administration Authorization Act of 1994 ("FAAAA"). Section 601 of the FAAAA preempted state economic regulation of motor carriers related to price, route or services. Contrary to Petitioners' statement of the issue, Section 601 did not prohibit "virtually all state regulation of intrastate motor carriers." Instead, that section effected only a partial preemption of state law, which is evidenced by Section 601's (49 U.S.C. 14501(c)(2)) description of matters not covered, wherein Congress stated that the preemption:

> (A) shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization; and
>
> (B) does not apply to the transportation of household goods.

2. On September 8, 1994, the Michigan Public Service Commission ("MPSC") issued an order, with notice to all interested parties including Petitioners, initiating a contested case proceeding (MPSC Case No. T-1273) to examine the effect of Section 601 of the FAAAA on the Michigan Motor Carrier Act ("MMCA"), M.C.L. 475. 1 *et seq.* and rules promulgated thereunder. In that September 8, 1998 order, the MPSC indicated that following the submission of evidence and testimony, it would issue a decision determining which sections of the MMCA and its rules had been preempted and which had not. The MPSC further stated the contested case proceeding was not intended to address the FAAAA's constitutionality but rather was intended to provide a framework for motor carriers to follow pending anticipated

action by the Michigan Legislature to conform the MMCA with the FAAAA.

3. On January 11, 1995, following contested case hearings and the submission of briefs by interested parties, the MPSC issued its opinion and order in MPSC Case No. T-1273 (Pet. App. 32-78),[1] identifying those provisions of the MMCA and rules promulgated thereunder, that were preempted by Section 601 of the FAAAA as well as those sections that were not preempted by Section 601 and which remained binding on motor carriers.

4. In its January 11, 1995 Opinion and Order, the MPSC found that despite some parties' assertions to the contrary, the wording of Section 601 stops far short of precluding the state regulation of all aspects of motor carriage. Pet. App. 57. The MPSC's order noted, for example, the heading to Section 601 which reads "Preemption of State Economic Regulation of Motor Carriers," and stated:

> This implies that, of the range of areas presently covered by state regulation, economic regulation (rather than regulation of safety, fitness, insurance, etc.) was singled out by Congress for at least partial preemption. Such an implication is further supported by the "General Rule" set forth in Section 601(h)(1), which states only that states "may not enact or enforce a law, regulation, or other provision . . . *related to a price, route, or service*" of any for-hire or private motor carrier. (Emphasis added.) Issues involving prices, routes, and

[1] The MPSC's January 11, 1995 Opinion is reprinted in the Petitioners' Appendix at pages 32-78. However, the Petitioners' Appendix does not contain Exhibit A and Exhibit B that were attached to the MPSC's order which the MPSC refers to in its order at Pet. App. 77. Exhibits A and B comprise 182 pages and sets forth the text of all Michigan statutes and regulations pertaining to motor carriers. In each Exhibit, the MPSC did a section-by-section analysis of those rules and regulations, carefully lining out those sections that were preempted by Section 601 of the FAAAA.

> services have long been considered by the motor carrier industry to fall within the definition of economic regulation.

Pet. App. 57. The MPSC further found that Section 601 itself provided a list of matters not covered by the preemption. The MPSC stated that the finding of a partial preemption was further supported by the FAAAA's legislative history. Pet. App. 58-59. The MPSC thus concluded:

> Based on Section 601's wording and legislative history, the Commission concludes that it preempts only those provisions of the Act and the Rules relating to price, route, and service. In reaching this conclusion, the Commission specifically rejects Central's argument that, because the primary focus of the Act has always been on economic regulation, no basis exists for continuing state regulation of motor carriage. The Commission reaches this conclusion for two reasons. First, Section 601 does not require that, to avoid preemption, safety regulation must be the primary focus of any state statute regulating motor carriage. Second, as correctly noted by the Staff, safety concerns occupy at least co-equal status with the economic regulation found in the Act.

5. Having determined that Congress intended only a partial preemption of state motor carrier laws, the MPSC's January 11, 1995 Opinion and Order then addressed whether specific areas of state motor carrier regulation were preempted. They include: regulation of household goods movers (Pet. App. 61-62); the certification process (Pet. App. 62-66); the assessment of annual registration fees (Pet. App. 66-68); jointly-established rates and classifications (Pet. App. 68-71); leasing requirements under M.C.L. (Pet. App. 71-72), and; other miscellaneous issues (Pet. App. 73-76).

With regards to the assessment of annual registration fees, the MPSC found that they were not preempted by Section 601 of the FAAAA, stating:

> The Commission agrees with the AAMA and the Staff. As already discussed in detail, the preemptive effect of Section 601 extends only to issues of price, route, and service. Neither the language of Section 601 nor the Conference Report imply that fees imposed by a state's existing regulatory structure might fall within that relatively narrow range of issues. Thus, application of the annual registration fee required by MCL 478.2 is not preempted.

Pet. App. 67. Importantly, the MPSC's opinion also notes that the MMCA does not require that revenue received (i.e. from fees) under that law be used exclusively for economic reasons. *Id.* Thus, the fees received can be used only to fund non-preempted motor carrier regulatory activities performed by the MPSC.

In response to the argument that the motor carrier fees should nonetheless be suspended or reduced the Commission reasoned there was an insufficient legal or factual basis for doing so. First, the MPSC noted that the amount of the fees was set by statute. Because of this, the MPSC concluded that it could not lawfully intrude in this area which was reserved to the Legislature. Pet. App. 67. Secondly, the Commission determined that even if it was authorized to make such a change, "the record provides an inadequate basis for doing so." Pet. App. 67.

6. On appeal, the Michigan Court of Appeals upheld the MPSC's opinion and order with respect to fees, finding that it was not only in keeping with Section 601's partial preemption but also supported by the record, as follows:

> The PSC still has significant regulatory obligations. For example, the PSC must supervise and regulate the safety of motor carrier operations. MCL 479.41; MSA 22.587(1). There is still a certification process. It follows that the fees for obtaining a certificate of authority, MCL 478.1; MSA 22.560, for protesting an application for a certificate, MCL

> 478.1a; MSA 22.560(1), and for administering the act, MCL 478.2(1); MSA 22.561(1), are unaffected by the preemptive effect of § 601. *In fact, because the PSC is not using its resources to enforce preempted portions of the Motor Carrier Act, the fees collected by the PSC are not related to the preempted provisions and rules. Indeed, appellants Central Transport and Universal Am-Can have not shown that the cost of the PSC's operations has ever been totally funded by the fees it collects, and they have not provided any reason to believe that the fees collected were or can be used only for what is now preempted economic regulation.* (Emphasis added.)

Pet. App. 18-19. Petitioners then sought leave to appeal the decision of the Michigan Court of Appeals to the Michigan Supreme Court, which unanimously denied in an order dated June 29, 1998.

7. The MPSC has *not* enforced any provision of the MMCA or its Rules which the MPSC found preempted by Section 601 in its January 11, 1995 order. However, the MPSC has continued to enforce those non-preempted provisions of the MMCA and its rules relating to such matters as safety, fitness, etc. Furthermore, the MPSC has also utilized the fees collected *only* for such non-preempted regulation conducted as of January 1, 1995.

ARGUMENT

Petitioners contend that the Michigan Court of Appeals erred in finding that Section 601 of the Federal Aviation Administration Authorization Act of 1994 ("FAAAA"), 49 U.S.C. 14501(c) did not result in the preemption of virtually all state motor carrier laws. The claim is without merit. As the Michigan Court of Appeals correctly recognized, the FAAAA, by its own terms, does not support the broad sweep of federal motor carrier preemption, urged by the Petitioners. Section 601 expressly excepts from its preemptive effect significant aspects of regulation, including safety regulation, regulation of size and weight of vehicles, regulation of

insurance requirements, and regulation of the transportation of household goods.

The Petitioners erroneously contend that the sole focus of the Michigan Motor Carrier Act ("MMCA"), M.C.L. 475.1 *et seq.*; M.S.A. 22.531 *et seq.* is the economic regulation of competition. This is not true since the MMCA, from its very inception, has had as a dual purpose to "protect and conserve the highways and protect the safety and welfare of the traveling and shipping public in their use of the highways." M.C.L. 475.2; M.S.A. 22.532. Because the Petitioners' claim lacks merit and because this case does not involve an important question of federal law that has not been, but should be, settled by this Court, or has been decided in a way that conflicts with relevant decisions of this Court, the petition for writ of certiorari should be denied.

A. THE MICHIGAN COURT OF APPEALS PROPERLY AFFIRMED THE MPSC'S DECISION THAT NON-ECONOMIC STATE REGULATION OF MOTOR CARRIERS WAS NOT PREEMPTED BY FEDERAL LAW.

1. Federal Preemption Is Determined By Congressional Intent, And Is Limited And Strictly Construed With Respect To Statutes Enacted Under The State's Police Powers.

Congressional intent determines whether federal law preempts state law. "[T]he critical question in any preemption analysis is always whether Congress intended that federal regulation supersede state law." *Louisiana Public Service Comm. v Federal Communications Comm.*, 476 U.S. 355, 369 (1986) (*"Louisiana PSC"*). This Court in *Louisiana PSC* identified when Congress can be understood to have preempted state law:

> Pre-emption occurs when Congress, in enacting a federal statute, expresses a clear intent to pre-empt state law..., when there is outright or actual conflict between federal and state law..., where compliance with both federal and state is

> in effect physically impossible..., where there is implicit in federal law a barrier to state regulation..., where Congress has legislated comprehensively, thus occupying an entire field of regulation and leaving no room for the States to supplement federal law..., or where the state law stands as an obstacle to the accomplishment and execution of the full objectives of Congress.... (Citations omitted).

476 U.S. at 368-369.

Petitioners erroneously argue that Congress has occupied virtually the entire field of regulation. However, federal occupation of a field will not be lightly inferred:

> The principle to be derived from [Supreme Court] decisions is that federal regulation of a field of commerce should not be deemed preemptive of state regulatory power in the absence of persuasive reasons - either that the nature of the regulated subject matter permits no other conclusion or that the Congress has unmistakably so ordained.

Florida Lime & Avocado Growers v Paul, 373 U.S. 132, 147 (1963).

Moreover, preemption of matters "within the traditional police power of the State should not be lightly inferred." *Fort Halifax Packing Co. v Coyne*, 482 U.S. 1, 21 (1987). A federal statute will be read to supersede a State's historic powers only if this is "the clear and manifest purpose of Congress." *Hillsborough County v Automated Medical Laboratories, Inc.*, 471 US 707, 715 (1985).

This Court has also recognized that, in exercising its power under the Commerce Clause, "Congress may weigh relative needs and restrict the application of a legislative policy to less than the entire field." *Mabee v White Plains Publishing Co.*, 327 U.S. 178, 184 (1946). In *Cloverleaf Butter Co. v Patterson*, 315 U.S. 148, 155 (1942), this Court added

that, where there has only been a partial exercise of the federal government's power over interstate commerce, "the state may legislate freely upon those phases of the commerce which are left unregulated by the nation."

As is evident from its plain language, Congress in Section 601 effected only a *partial* preemption, while expressly *preserving* other state regulation (safety, fitness, etc), which necessarily includes the attendant fees used for such continued regulation. Congress neither sought nor intended to occupy virtually all motor carrier regulation (or to bar continued state regulation in the areas not preempted). The MPSC's decision, as affirmed by the Michigan Court of Appeals, recognized Section 601's preemption, and the Congressional intent *not* to preempt areas relating to safety, fitness, certificates, fees, among others.

2. The Express Language Of FAAAA Section 601 And Its Legislative History Establish That Congress Did Not Intend To Preempt Non-Economic State Regulation Of Intrastate Transportation Of Property By Motor Carriers, Including Safety and Fitness Regulation, And The Issuance Of Certificates And Collection Of Fees Related Exclusively To Such Non-Preempted Regulation.

FAAAA Section 601 provides for only *partial preemption* of traditional state authority to regulate intrastate motor carrier matters, and did not preempt all state regulation of for-hire carriers as Petitioners' claim. By its own terms, Section 601 provides for only *partial* preemption of state regulation, namely, economic regulation "related to a price, route, or service of any motor carrier". Section 601(h) [49 U.S.C. 14501(c)], in pertinent part, states:

> (1) GENERAL RULE. -- Except as provided in paragraphs (2) and (3), a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a

> law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier (other than a carrier affiliated with a direct air carrier covered by section 41713(b)(4) of this title) or any motor private carrier with respect to the transportation of property.
> (2) MATTERS NOT COVERED.--Paragraph (1)--
> (A) *shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization; and*
> (B) *does not apply to the transportation of households goods.* (Emphasis added).

Besides the plain language of Section 601's statutory provisions, the legislative history also establishes that only a *partial* preemption was intended by Congress, and not the sweeping preemption that Petitioners suggest. The preemption as stated pertains only to that which is "related to a price, route, or service of any motor carrier." The legislative history further indicates that the specific exemptions from preemption listed in Section 601(h)(2)(A) (e.g., safety, financial fitness, fees, size, weight, etc.) were *not* intended as a specific or exhaustive list, but were meant as examples of the kind of state regulation that remains. In other words, Congress preempted only those matters which are expressly preempted in the FAAAA, and nothing else. In this regard, the House Conference Report No. 103-677, p. 84, reprinted in 1994 U.S.C.C.A.N. 1756 states:

> Paragraph (4)(B) emphasizes that State authority to regulate safety, financial responsibility relating to insurance, transportation of household goods, vehicle size and weight and hazardous materials routing of air carriers and carriers affiliated with a direct

> air carrier through common controlling ownership is unchanged, since State regulation in those areas is not a price, route or service and thus is unaffected. (This provision is identical to the new subsection 11501(h)(2)(A) discussed below.) *This list is not intended to be all inclusive, but merely to specify some of the matters which are not "prices, rates or services" and which are therefore not preempted.* (Emphasis added).

The House Conference Report No. 103-677, reprinted in 1994 U.S.C.C.A.N. 1757 further indicates that those matters which are not a price, rate or service are not preempted, stating as follows:

> New subsection (h)(2) emphasizes that State authority to regulate safety, financial fitness and insurance, transportation of household goods, vehicle size and weight and hazardous materials routing of motor carriers is unchanged since State regulation in those areas is not a price, route or service and thus is unaffected. This subsection is identical to section 41713(b)(4)(B), described above.

The same House Conference Report also provides compelling evidence that congressional intent is not to preempt the ability of the states to issue statewide certificates of authority applicable to motor carriers to demonstrate their compliance with state and federal laws, or to interfere with tax (or fee) laws, as follows:

> Furthermore, neither preemption provision would preempt the ability of a State to issue a certificate or other documentation (in written or electronic form) demonstrating that the carrier complies with State requirements which are not preempted by these sections and nothing in this amendment is intended to change the application of State tax laws to motor carriers.

House Conference Report, 103-677, p. 85, reprinted in 1994 U.S.C.C.A.N. 1757.

Petitioners, however, claim that a broad preemptive purpose can be ascertained by looking at the language Congress has used to deregulate the airline industry (citing Airline Deregulation Act of 1978 (ADA), 49 U.S.C. 41713). Petitioners indicate that the ADA prohibited the states from enacting or enforcing Laws "relating to rates, routes, or services." Citing the House Conference Report on Section 601, Petitioners claim that this Court's decision in *Morales v TransWorld Airlines*, 504 U.S. 374; 112 S. Ct. 2031; 119 L. Ed. 2d 157 (1992) should be the starting point for any determination of the preemptive effect of the FAAAA.

The *Morales* case, however, involved a different issue, under a different Act, relating to solely to airlines. Furthermore, the FAAAA, adopted in August 1994, and effective January 1, 1995, was simply not before this Court in *Morales* in 1992. As with any other statutory construction issue, and as the Michigan Court of Appeals below held, any analysis of Section 601 of the FAAAA should start with the plain language of the FAAAA itself. The Michigan Court of Appeals properly addressed itself to the plain language of the FAAAA in determining its preemptive scope. Moreover, a review of House Conference Report 103-677 indicates that the Michigan Court of Appeals' reading of the language of the FAAAA was correct.

It should also be noted that Section 601 was expressly given prospective, not retroactive, effect. By its terms, Section 601 is effective January 1, 1995. The FAAAA did not transform this Court's ruling in *Morales*, applicable to an airline, into a retroactive preemption of state law relative to motor carrier regulation. Moreover, the MPSC prior to the adoption of Section 601 had already ruled that economic regulations related to rates, routes, or services do not apply to air carriers, or to motor carrier operations integrated with air carriers, but would apply only to ground-only motor carrier

functions, not having a connection with air carriers.[2] Thus, the MPSC has always regulated in a manner consistent with the 1992 *Morales* decision.

Also, in *Morales,* the airlines sued to enjoin various State attorneys general from enforcing state guidelines requiring that airline advertisements contain certain disclosures as to fare terms, restrictions and availability. The Court concluded that the airlines' advertisements "relat[ed] to rates" and were therefore preempted by the ADA. This Court, however, in *Morales* emphasized the limited reach of its holding:

> Nor need we address whether state regulation of the non-price aspects of fare advertising (for example, state laws preventing obscene depictions) would similarly 'relat[e] to' rates; the connection would obviously be far more tenuous. . . . *'[s]ome [S]tate actions may affect [airline fares] in too tenuous, remote, or peripheral a manner' to have pre-emptive effect.* (Emphasis added).

504 U.S. at 390.

Both Section 601 itself and House Conference Report 103-677 thus indicate that with the preemption of state regulation "related to a price, route, or service of a motor carrier" that Congress listed, by example and not limitation, several major areas of state regulation which were *not* preempted. Such examples included, *inter alia,* the major area of safety related regulation and the ability of states to review and issue (or deny) statewide certificates of authority to ensure compliance with state and federal law. Similarly, Section 601 contains no language suggesting that the collection of fees is in any way altered. In fact, the presumption is that the fee collection power was continued in order to provide

[2] The MPSC in its August 25, 1992 Order *In Re Federal Armored,* MPSC File No. 23409, Case No. 5, determined that the economic regulation of motor carrier air-ground services were subject to preemption under Section 1305 of the Airline Deregulation Act, but the carrier's strictly ground-based services were not preempted.

revenues to ensure proper safety related regulation, and to ensure that the motor carrier industry pays its fair share of services rendered by the states, which benefit motor carriers.

The legislative history indicates that a primary intent behind Section 601's preemption was to provide a level playing field relative to *economic* regulation of motor carriers and air carriers, and *not* to impact safety or other non-economic motor carrier regulation. House Conference Report, 103-677, pp. 85-87, reprinted in 1994 U.S.C.C.A.N. 1757-1759. Thus, the overriding goal of Section 601 was to put all motor carriers on an equal competitive footing regardless of whether their services did or did not include an air carrier component. Therefore it may be seen that the FAAAA's preemption relates to the *economic* regulation relating to a "price, route, or service" and not to other regulatory areas, and not to areas of state regulation that Section 601 expressly exempted from preemption (safety, fitness, etc).

3. The Michigan Court of Appeals Correctly Held That FAAAA Section 601 Does Not Preempt The MMCA Fee Provisions.

Petitioners argue that M.C.L. 478.1, 478.2(1) and 478.2(2), which provide for the collection of fees, were preempted by Section 601 as of January 1, 1995. The Petitioners' entire theory, however, is based upon the erroneous premise that the fees are to be impliedly swept into preemption as relating to "a price, route, or service of any motor carrier." As noted, however, neither the issuance and renewal of statewide certificate authority, nor the state fees at issue, were intended to be preempted by Congress, as they are not related to "a price, route, or service" of a motor carrier.

The Petitioners fail to acknowledge that Congress, by expressly preserving significant aspects of state motor carrier regulation such as safety, fitness, etc., adopted only a partial preemption of state law. Moreover, the part of regulation preempted by Section 601 does not affect the regulatory fees in this case as the MPSC has not engaged in any economic or

other regulation preempted by Section 601. Since January 1, 1995, the MPSC has only engaged in regulatory activity, such as safety, which is expressly not preempted by Section 601, and has used all collected regulatory fees only for said activity or to reimburse the state for motor carrier related costs.

The Michigan Court of Appeals below correctly found that the clear and unambiguous language of Section 601 expressed Congressional intent *not* to preempt all state regulation of the trucking industry. The Court of Appeals characterized Section 601's preemptive effect as follows:

> Congressional intent is the cornerstone of preemption analysis. *Ryan v Brunswick Corp*, 454 Mich 20, 27; ___ NW2d ___ (1997). Regardless of the similarities between the Airline Deregulation Act of 1978 and § 601 of the FAAAA, it is clear and unambiguous from the language of § 601 that the congressional intent was not to preempt all state regulation of the trucking industry. Section 601 expressly excepts from its preemptive effect significant aspects of regulation, including safety regulation, regulation of size and weight of vehicles, regulation of insurance requirements, and regulation of the transportation of household goods. If the language of a statute is clear and unambiguous, the plain meaning of the statute reflects the legislative intent. (223 Mich App 288, 301). (Pet. App. 17).
>
> [T]he House Conference Report indicates that "economic regulation" is intended to be preempted and that states retain their authority to regulate various aspects of the transportation industry. See H R Conf Rep No 677, 103rd Cong, 2nd Sess, pp 84-85. The title given to 49 USC 11501(h) is "Preemption of State *Economic* Regulation of Motor Carriers." (Emphasis added.) Appellants' argument that Congress intended to preempt the entire field of regulation of motor carriers fails in the face of

> the language of the legislation and its history. The PSC's determination that § 601 was intended to preempt only economic regulation is consistent with the language and history of the legislation. (Pet. App. 17).

Although the Petitioners' claim that preemptive effect of the FAAAA was more extensive than what the Michigan Court of Appeals found, they have failed to address or rebut major underpinnings of the Michigan Court of Appeals' decision. For example, the Court of Appeals found that the FAAAA, *by its own terms,* does not support the "broad sweep of the federal motor carrier preemption", urged by the Petitioners.

The Petitioners fail to come to grips with the fact that the Michigan Court of Appeals finding with respect to the extent of the FAAAA's preemption comes from a plain reading of that Act. In essence, what the Michigan Court of Appeals found is that because the statute is clear and unambiguous, no statutory interpretation is necessary. Thus, the language of the statute controls.

Additionally, the Petitioners have failed to contest two critical findings made by the Michigan Court of Appeals, 223 Mich. App. 288, 302-303, where the Court states:

> In fact, *because the PSC is not using its resources to enforce preempted portions of the Motor Carrier Act, the fees collected by the PSC are not related to the preempted provisions and rules.* Indeed, appellants Central Transport and Universal Ameritech-Can have not shown that the cost of the PSC's operations has ever been totally funded by the fees its collects, and they *have not provided any reason to believe that the fees collected were or can be used only for what is now preempted economic regulation.* (Pet. App. 18-19).

In summary, Section 601 contains no language that preempts the continued authority of the states to grant

statewide certificates to ensure continued compliance with state and federal laws applicable to motor carriers, and to collect applicable fees to fund non-preempted regulation such as safety and fitness. Moreover, Congressional intent, discussed *supra*, indicates that no preemption of statewide certificates or fees was intended.

Pet. App. 59-60.

4. A Major Purpose Of The MMCA Extends To Safety Regulation, Which Has Been Preserved By FAAAA Section 601.

Petitioners erroneously contend that the sole focus of the MMCA state economic regulation of motor carriers. Petitioners are incorrect because the MMCA, since its enactment in 1933, has had the dual purpose of not only economic regulation, but also, importantly, safety regulation.

The very first titled purpose of the Motor Carrier Act is "to promote safety upon and conserve the use of public highways of the state..." This is restated in the purpose and policy section of the Act, M.C.L. 475.2; M.S.A. 22.532, which states in part as follows:

> It is hereby declared to be the purpose and policy of the Legislature in enacting this law to confer upon the Commission the power and the authority and to make it its duty to supervise and regulate the transportation of property by motor vehicle for hire upon and over the public highways of this state in all matters whether specifically mentioned herein or not, so as to:... (b) *protect and conserve the highways and protect the safety and welfare of the traveling and shipping public in their use of the highways;...* (emphasis added).

The current title to the MMCA also provides for the collection of fees and taxes from motor carriers to promote highway safety and conservation as follows:

> [T]o provide for the levy and collection of certain privilege fees and taxes for such carriers *for such purposes* and the disposition of such fees and taxes; ... (emphasis added).

The MMCA extensively addresses safety, fitness, and insurance issues. M.C.L. 475.5; M.S.A. 22.533(3) tailors the duration of evidentiary proceedings to accommodate fitness issues, and M.C.L. 476.3; M.S.A. 22.536 requires Commission review of applications for certificates of authority to verify the physical condition of the equipment and property of the applicant as well as to ascertain that the vehicles of the applicant have passed an inspection within the proceeding 12 months pursuant to the requirements of the Motor Carrier Safety Act, 1963 P.A. 181, M.C.L. 480.11, *et seq.*; M.S.A. 9.1666(1a) *et seq.*

Sections 476.5, 476.10, 478.7, 479.9, 479.10, 479.11, 479.12 and 479.13 all underscore and amplify the Commission's regulatory duties relating to public safety as they apply to motor carriers. These sections spell out the Commission's responsibilities ranging from insurance monitoring and other record checking to leasing, contested case evidentiary presentations, rulemaking responsibilities, and collection of assessments. The MPSC is also granted "authority to prevent evasion of this act through any device or arrangement" [Title and M.C.L. 475.2(l)] and to do "all things necessary to carry out and enforce this act." (M.C.L. 476.10).

Both the MPSC and the State Police also act in concert, in many instances, to enforce both the MMCA and the Michigan Motor Carrier Safety Act, 1963 P.A. 181, M.C.L. 480.11, *et seq.*; M.S.A. 9.1666(1a), *et seq.* In addition, a recent act, 1993 P.A. 352, effective January 13, 1994, now Article VI of the MMCA, M.C.L. 479.41; M.S.A. 22.587(1) ("Art VI"), which expands the MPSC jurisdiction and authority relative to motor carrier safety, in conjunction with the State Police, states:

> Sec. 1. The commission shall supervise and regulate the safety of operations of each motor carrier. The commission may promulgate rules

> for the purpose of promoting safety upon the highways and the conservation of their use. [M.C.L. § 479.41; M.S.A. 22.587(1)].
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> * * *
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> Sec. 2. Upon request of the commission, the department of state police shall review the operation of an intrastate motor carrier to determine whether the carrier is in compliance with applicable safety related laws and rules and issue a report within 60 days after completion of its review to the commission. [M.C.L. § 479.42; M.S.A. 22.587(2)].
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> Sec. 3. The public service commission, in cooperation with the department of state police, will develop and implement by rule or order a motor carrier safety rating system within 12 months after the effective date of this article. In the rating system, an unsatisfactory rating shall not be imposed without an on-site safety review being conducted by the department of state police. [M.C.L. § 479.43; M.S.A. 22.587(3)].

MMCA Art VI thus explicitly authorizes cooperative functions between the MPSC and State Police in furthering motor carrier related public safety. Pursuant to Art. VI, the MPSC may request State Police review of the operations of particular motor carriers for compliance with safety related laws and rules. Moreover, the two agencies are directed to cooperate in developing a motor carrier safety rating system which is now in place and is being administered by the MPSC.

In light of the foregoing, the Petitioners contention that the MMCA's sole focus was the economic regulation of motor carriers lacks merit. Instead, the MMCA contains numerous provisions related to safety and other matters not preempted by Section 601 of the FAAAA. The MPSC has made a good faith effort to comply with federal law and has done so by identifying those provisions of the MMCA that were preempted by the FAAAA and which would no longer be enforced by the MPSC pending anticipated action by the

Michigan Legislature to conform the MMCA with the FAAAA. The determinations made by the MPSC are consistent not only with the plain language of Section 601 of the FAAAA but also with the legislative history underlying that enactment. The Michigan Court of Appeals' decision affirming the MPSC's decision and the Michigan Supreme Court's denial of the Petitioners' Application for Leave to Appeal to that Court were correct.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

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